

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.) 4:20-CR-00706-SRC
)
MICHAEL SWEARENGEN)
)
Defendant.)

**DEFENDANT'S SENTENCING SUBMISSION AND REQUEST TO ADOPT ADJUSTED
JOINT RECOMMENDATION**

NOW COMES the Defendant, MICHAEL SWEARENGEN, by and through his attorney, Scott J. Krischke, assistant federal defender, and offers this Sentencing Submission along with the attached letters and exhibits to aid this Court in imposing a fair and reasonable sentence in this case, and sentencing Mr. Swearengen to the within-guidelines, adjusted joint recommendation of 70 months incarceration concurrent with his parole time owed.

IN SUPPORT of this Motion, Defendant states:

In January 2021, Michael Swearengen's life was forever changed. This was not from his incarceration – he had been held in continuous custody since early November 2020 – but rather something far more positive and uplifting, something that gave the 24-year-old Michael purpose and hope for the first time in his young, tumultuous life: the birth of his first and only child, Michael Swearengen III.



Michael Swarengen III

For Michael, the birth of his son represented the first life-affirming moment in the world of death, pain and suffering in which Michael had previously lived among the violent, dangerous streets of North St. Louis. “For me, when he came into my life, that was it,” Michael said, noting that his entire life changed the first moment he saw his young son. Now, as a father, Michael’s primary purpose is to support, care for, protect and raise his son.

It's a role that Michael never believed he would come to live. In his earliest years, the closest person to him was his grandmother on his mother's side, Sandra Foster. Michael was just 11-years-old when she passed away. PSR, Doc. 32, ¶51. Without an anchoring and consistent parental figure in his life, Michael soon found himself surrounded by drugs, guns and violence living on and off the streets of North St. Louis. Michael frequently lost close friends to gun violence. Some of whom were shot and killed before his own eyes. This cycle of traumatic violence left Michael with the imminent belief that he, too, would be shot to death – another statistic of the violence of North St. Louis.

It was that constant fear and anxiety, borne out of witnessing so many friends murdered, that caused Michael to arm himself with a rifle on August 31, 2020. As he left his friend's house on that day, Michael, seeing the plain-clothes officers conducting unrelated surveillance, believed that they could be gunmen lying in wait, looking to kill him. While this dread and apprehension do not excuse this behavior – and nor does Michael contend as such – they help to explain why Michael felt the need to possess a firearm on this day, and to commit this offense.

Despite this extremely poor and dangerous decision for which he accepts full responsibility and expresses enormous remorse, Michael has always been seen by those closest to him as a soft-spoken, sensitive young man who constantly looked to better the lives of those around him. "He has always been helpful in any way he can. He is a true gentleman and is always true to his words," his father, Michael Swearengen Sr. writes this court. Exhibit A, *Father's Letter*. "My son is really a good and sweet kid who lives his mom," his mother, Celina Foster, has written. Exhibit B, *Mother's Letter*. Noting that Michael was trying to escape the violence, guns and drugs around him in north St. Louis before he was arrested in this matter. "Michael has experienced so many deaths of loved ones within the last few years. He has lost close friends and family," his father added, underlining the troubling conditions of leading up to Michael's arrest. *Ex. A.*

Among all of his loved ones, perhaps those who know Michael the best are his girlfriends, Tyresia Parker and Darrisha Barnes, with whom he maintains a joint relationship. “From the first day I met (Michael) he had such a positive and uplifting persona,” Tyresia has written, noting the heavily positive influence Michael has had on her life, particularly as it was spiraling out of control as she grappled with being the victim of sexual violence. **Exhibit C**, *Tyresia’s Letter*. “I was suicidal on different occasions and angry at myself and the world. Shortly after meeting him, that all changed,” Tyresia continues. “Michael pushed me to go to school everyday and tried his hardest to make sure I wouldn’t give up.” *Id.* For Darrisha Barnes, the mother of his young child, Michael has been a constant source of support, love and encouragement. “Michael has always rooted for me to win and never gave up on me no matter how hard I was to deal with he’s always had my back even when he was dealing with his own problems,” Darrisha writes. **Exhibit D**, *Darrisha’s letter*.

Michael will come before this Court on June 28, 2021 for sentencing and he will be able to cope with that difficult day by drawing on the hope and positivity that comes with knowing this will bring this case to a close, and bring him one step closer to being reunited with his son. Michael is confident in his successful reentry knowing that he has a loving family and child who depends on him for support upon his release. Previously Michael had made efforts to receive his welding certificate, and while he is incarcerated he will look to complete that vocational training. *See PSR, Doc. 32, ¶62.* In addition to preparing himself for his ultimate release, Michael looks forward to having at his disposal the intensive and effective substance abuse treatment programs within the Bureau of Prisons, as his daily use of multiple drugs played a large role in shackling him to this lifestyle, resulting in his commission of this offense and presence before this Court in this matter. All of these programs will help lead Michael to be prepared for his reentry to society – to work for and provide for his child and family, and to have the tools needed to avoid drugs and alcohol.

As of the date of his sentencing, Michael will have only seen his young son in person once – through an inch of glass and only able to speak to him via a jail phone. About once a week, Michael is able to speak with him via scheduled video calls from the facility. These moments are always the most important for Michael – and they reaffirm his purpose to live the positive, productive lifestyle that is deep within him and that he will adopt upon his ultimate release upon the completion of his sentence.



Michael on a video call with his son

Michael comes before this Court solemnly accepting his responsibility for this offense, prepared to receive what will be the lengthiest period of incarceration of his life. However, for Michael, there is a light at the end of this very dark tunnel: the inherent purpose he has for improving himself to be a father for his child, to support and protect his son, and to instill in him the values and benefits of his experiences that he so sorely lacked so that his young child never finds himself in this same position. Fortunately for Michael he is young enough and has the broader support network of family and loved ones to allow him to turn his life around and with the treatment and programming provided by BOP and later U.S. Department of Probation, Michael will be put into a position to succeed and be the man he and everyone around him knows he is capable of being upon his reentry.

For these reasons, we request that this Court adopt the amended joint recommendation and sentence Michael to the within-guidelines sentence of 70 months. Additionally, we request this Court to agree to allow the sentence to run concurrently to his parole time owed¹ so that he can be expeditiously transferred to BOP and avail himself of the training and programming that will allow him to take responsibility for his life and have the highest probability of success for his family upon his release.

Respectfully submitted,

/s/ Scott J. Krischke
SCOTT J. KRISCHKE
Assistant Federal Defender #5015771 (NY)
1010 Market Street, Suite 200
St. Louis, Missouri 63101
Telephone: (314) 241-1255
Fax: (314) 421-3177
E-mail: Scott_Krischke@fd.org
ATTORNEY FOR DEFENDANT

¹ Michael has been in primary state custody throughout the pendency of this case, which means that the approximate seven months of incarceration that he has already spent associated with this matter will not count towards his federal sentence, which will begin upon his sentence in this matter and transfer to BOP custody. If this is sentenced to run concurrently, he will be moved to BOP following this court's final sentencing order.

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2020, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Cassandra Wiemken, Assistant United States Attorney.

/s/Scott J. Krischke
SCOTT J. KRISCHKE
Assistant Federal Public Defender